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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,693	09/28/2006	Leo Bernard de Vries	294-246 PCT/US	7172
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HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			EXAMINER XAVIER, VALENTINA	
			ART UNIT 3644	PAPER NUMBER
			MAIL DATE 03/19/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/573,693	<b>Applicant(s)</b> DE VRIES ET AL.	
	<b>Examiner</b> VALENTINA XAVIER	<b>Art Unit</b> 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant fails to clearly disclose the harvesting means recited in Claim 5.

Claim element “harvesting means” in claim 5 is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it clearly links or associates the corresponding structure, material, or acts to the claimed function without introducing any new matter (35 U.S.C. 132(a)); or

(c) State on the record where the corresponding structure, material, or acts are set forth in the written description of the specification that perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1 – 5 and 6 – 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Gollott et al (US 4,266,509).**

**With regard to claim 1:**

Gollott et al discloses a method and apparatus for offshore depurating habitat for shellfish comprising at least two mutually spaced apart floating bodies (cables 48 connected to 52), floating bodies mutually connected by connecting means (22, 26, 28, 32, 36), such that an open frame is formed by at least said connecting means (See Fig. 6), wherein at least between the floating bodies a series of breeding surfaces (44) are provided (See Fig. 6), breeding surfaces extending substantially parallel to each other above each other (See sections created by 42), the floating bodies (48) having a substantially cylinder-shape and a

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longitudinal axis disposed at an angle relative to the breeding surfaces, the longitudinal axis extending substantially vertically during use (See Fig. 1)

**With regard to claim 2:**

The breeding surfaces of Gollott et al are formed by rows of growing elements (shellfish) arranged substantially next to each other in receptacles 44.

**With regard to claim 3:**

Gollott et al discloses paths being provided (created by element 42) between the rows of growing elements located next to each other.

**With regard to claim 4:**

Gollot et al discloses the breeding surfaces being manufactured from plastic (See last line of Col. 3).

**With regard to claim 6:**

Gollott et al discloses the frame being provided with supporting means (18, 20) on which the breeding surfaces are mounted, such that the breeding surfaces are removable individually or in groups.

**With regard to claim 7:**

Gollott et al discloses the breeding surfaces having upstanding edges (see elements 44 in Fig. 6).

**With regard to claim 8:**

Gollott et al discloses four floating bodies (four suspension cables 48).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 9 – 11, 13 and 15 – 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gollott et al (US 4,266,509).**

**With regard to claim 9:**

Gollott et al shows in Fig. 6 that the distance between the floating bodies (the point at which they are anchored to the frame at 36) is relatively large relative to the height of the frame. Gollot et al fails to show specifically that the distance between the floating bodies is three or five times as much as the height of the frame. However, it would have been an

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obvious matter of design choice to use this distance, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

**With regard to claim 10:**

Gollot et al also shows that the breeding surfaces are situated relatively closely above each other but fails to show the distance being between 0.1 and 1 meter, more in particular between 0.1 and 0.5 meter and preferably between 0.25 and 0.5 meter. However, it would have been an obvious matter of design choice to use these given ranges, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

**With regard to claim 11:**

Gollot et al fails to show that the apparatus is self-lifting – however, with a more buoyant floatation device the apparatus would be able to achieve a self-lifting position. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a floatation device to the apparatus in order to allow the apparatus to be positioned at any desired depth in the water.

**With regard to claim 13:**

Gollot et al does not disclose a ballast means, however, Examiner has already addressed the floating means in the discussion of claim 1, which does not necessarily require the use of a ballast means, and is only an option.

Gollot et al discloses the floating bodies (suspension cables 48) being cylindrical-shaped with a longitudinal axis including an angle (at the connection 36 to frame) with the breeding surfaces and during use extending substantially vertically (See Fig. 1).

**With regard to claim 15 – 18:**

The discussion regarding claims 1 – 14 are relied upon for the structure recited in the instant claim. Therefore, the method steps of the instant claim(s) would be readily apparent during the use of the habitat for shellfish since similar structure is taught in the above discussion.

**Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gollott et al (US 4,266,509) in view of Foster et al (US 6,044,798).**

**With regard to claim 12:**

Gollot et al fails to show that the frame comprises of a number of subframes comprising a series of breeding surfaces. However, Foster et al teaches a floating aquaculture apparatus combining a series of units (34) used for aquaculture. It would have been obvious to one having ordinary skill in the art at the time the invention was made to



use this technique of supporting more than one unit or "sub frame" within a larger system for the predictable result of providing a larger habitat.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 8, 11, 13, 15, and 16 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 12/01/2008 have been fully considered but they are not persuasive. Applicant argues on Page 8 of the Remarks that Gollott does not teach "floating bodies". Applicant states that the floating bodies of Gollott (cables 48) are constructed from galvanized steel or other suitable non-corrosive metal structure and thus, do not teach a floating body. However, in Fig. 1, it is clearly shown that cables 48 are floating as opposed to being suspended; therefore the Examiner considers them to be floating bodies. With the help of element 52, cables 48 are made into "floating bodies".

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened

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statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VALENTINA XAVIER whose telephone number is (571)272-9853. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571)272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael R Mansen/  
Supervisory Patent Examiner, Art Unit 3644

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